

REMARKS

In the Office Action mailed February 17, 2009 the Examiner noted that claims 1-19 were pending and rejected claims 1-19. Claims 1 and 19 have been amended, claims 2-18 have been canceled, claims 20-37 been added, and, thus, in view of the foregoing, claims 1 and 19-37 remain pending for reconsideration which is requested. No new matter has been added. The Examiner's rejections are traversed below.

REJECTIONS under 35 U.S.C. § 112

Claim 1 stands rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, the Office asserts that "the selected preparation place is selected as being within a predetermined distance of the selected transfer place," is not disclosed. The Applicants have amended the claim to overcome the rejection. Support for the amendment may be found below in reference to the § 102 rejection.

Claims 1-18 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. In particular, the Office asserts that the claims are narrative and fail to conform to U.S. practice or are omnibus in nature.

The Applicants have cancelled claims 2-18. Claims 2-12 are replaced by claims 27-37. Claim 13 has been cancelled in favor of claim 19. Claim 13's dependents are now found in claims 20-22. Claims 16-18 have been cancelled in favor of claims 23-26 based on claim 19. Support for the new claims may be found in the originally filed or previously presented claims.

The Applicants submit that the claims as now recited are neither omnibus nor indefinite.

Withdrawal of the rejections is respectfully requested.

REJECTIONS under 35 U.S.C. § 102

Claims 1-7, 10-13, 16 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hall, U.S. Patent No. 6,026,375. The Applicants respectfully disagree and traverse the rejection with an argument and amendment.

Hall discusses a system of receiving an order and has the completion of the order coincide with a customer's arrival at the store.

The Applicants have amended claim 1 to recite "a transfer place of a plurality of transfer places selected based upon the transfer place being a predetermined distance from the preparation place **and** the transfer place's location along an expected path, the expected path determined by speed of the conveyance, distance of the conveyance from any of the plurality of transfer places and traffic conditions along any of a probable

path of the conveyance to the plurality of transfer places, the transfer place being the location where the merchandise is transferred to an orderer." (Emphasis added) Support for the amendment may be found, for example, in ¶ 0107 of the printed publication version of the Specification. The Applicants submit that no new matter is believed to have been added by the amendment of the claims.

In contrast Hall states in col. 9, lines 19-33

Next, System Agent 30 determines a local facility using the customer's location information and information from Facilities Database 372 (Step 664). Facilities Database 372 is a list of participating service provider facilities, location information, and other information about the facility, such as stock on hand or capability. In a preferred embodiment, System Agent 360 calculates the estimated time of arrival (ETA) of the customer to the local facility (Step 666). Preferably, **the local facility is the facility nearest geographically to the customer's location at the time of the order or a facility that is convenient to the customer's planned travel route**, such as on the way home from work. System Agent 360 then queries Local Scheduler 376 to determine whether the local facility can satisfy the order (Step 670). [Emphasis added]

Thus, while the Applicants acknowledge that in Hall a customer's planned route is taken into consideration, it does not take into account traffic, speed and other variables in the claims to choose the transfer place. There is nothing in the reference to indicate any more than the mere planned path is considered. Further, as the preparation place and transfer place are separate, Hall does not take into consideration that these locations must be a predetermined distance from each other.

The Applicants recognize that in the Office Action on

pages 5 and 6, the Office states that the preparation place and transfer place are made inherent by a drive-thru service such as McDonalds.

However, as the Applicants have amended the claims to have the transfer place a predetermined distance from the preparation place **and** that location is further determined by the path of the conveyance, taking into consideration traffic, etc., the McDonald's drive-thru no longer makes the features of the claim inherent. In the McDonald's drive-thru there is no requirement that one of the **plurality** of transfer places be a predetermined distance from the preparation place. In the McDonald's drive through there is only one transfer place. Further, conditions of the roads and distance, traffic, etc., have no bearing on which transfer place is chosen if the transfer place and preparation place are in the same store as the Office states on page 6.

Thus, Hall does not disclose the features of the claims. Further neither is the instance feature made inherent by the McDonald's drive-thru service.

Claims 19, 23 and 27 recite similar features. Therefore, for at least the reasons discussed above, claims 1, 19, 23 and 27 and the claims dependent therefrom are not anticipated by Hall.

Withdrawal of the rejections is respectfully requested.

REJECTIONS under 35 U.S.C. § 103

Claims 15 and 18 stand rejected under 35 U.S.C. § 103(a) as being obvious over Hall. The Applicants respectfully disagree and traverse the rejection with an argument. Dependent claims 15 and 18 are for at least the reasons discussed above as to the independent claims.

Claims 8, 9, 14 and 17 stand rejected under 35 U.S.C. § 103(a) as being obvious over Hall in view of Ikeda, U.S. Patent Publication No. 2002/0041240. Ikeda adds nothing to the deficiencies of Hall as applied to the independent claims. Therefore, for at least the reasons discussed above, Hall and Ikeda, taken separately or in combination, fail to render obvious the features of claims 8, 9, 14 and 17.

Withdrawal of the rejections is respectfully requested.

SUMMARY

It is submitted that the claims satisfy the requirements of 35 U.S.C. §§ 112, 102 and 103. It is also submitted that claims 1 and 19-37 continue to be allowable. It is further submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

The Commissioner is hereby authorized in this,

concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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